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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/760,843	01/17/2001	Hironobu Ishida	2091-0230P-SP	4586

2292 7590 03/01/2005

BIRCH STEWART KOLASCH & BIRCH  
 PO BOX 747  
 FALLS CHURCH, VA 22040-0747

EXAMINER

DUONG, THOMAS

ART UNIT	PAPER NUMBER
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2145

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/760,843

Applicant(s)

ISHIDA, HIRONOBU

Examiner

Thomas Duong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 33-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 33-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 28-32 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

1. This office action is in response to the applicants Amendment filed on October 7, 2004. Applicant amended *claims 6 and 22* and added *claims 25-35*. *Claims 1-35* are presented for further consideration and examination.

### *Claim Objections*

2. *Claims 6-8, 14-16 and 22-24* are proper multiple dependent claims and refer to other claims (any one of *claims 1-5, 9-13 and 17-21*, respectively) in the alternative only. As such, the Examiner will consider the multiple dependent *claims 6-8, 14-16 and 22-24* as dependent claims to *claims 1, 9 and 17*, respectively.

### *Election/Restrictions*

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:  
*Group 1: Claims 1-27 and 33-35 are drawn to "distributed data processing: client/server", classified in class 709, subclass 203.*  
*Group 2: Claims 28-32 are drawn to "computer-to-computer data transfer regulating: transfer speed regulating", classified in class 709, subclass 233.*

The inventions are distinct, each from the other because of the following reasons:

- Inventions of *Group 1* are related as combination and subcombinations of *Group 2*. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombinations

as claimed for patentability, and (2) that the subcombinations has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination (*Group 1*) as claimed does not require the particulars of the subcombinations (*Group 2*) as claimed because to both subcombinations and combination are presented and assumed to be patentable. The omission of specific details of the subcombinations as recited in claims 28-32, in the combination as recited in claims 1-27 and 34-35 is evidence that the patentability of the combination does not rely on the details of the specific subcombinations. The subcombinations of *Group 2* have separate utility such as "*computer-to-computer data transfer regulating: transfer speed regulating*".

- Inventions of *Group 2* are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, inventions of *Group 2* have separate utility such as "*computer-to-computer data transfer regulating: transfer speed regulating*". See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required a separate status in the art as shown by their different classification, the search required for *Group 1* is not required for the other *Group 2*, restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include and election of the invention to be examined even through the requirement be traversed (37 CFR 1.143).

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5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS ACTION IS SET TO EXPIRE THIRTY DAYS FROM THE MAILING DATE OF THIS COMMUNICATION. FAILURE TO RESPOND WITHIN THE PERIOD FOR RESPONSE WILL CAUSE THE APPLICATION TO BECOME ABANDONED (35 U.S.C. § 133). EXTENSIONS OF TIME MAY BE OBTAINED UNDER PROVISIONS OF 37 CFR 1.136 (A).

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-2, 9-10, 17-18, 25-27 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Arias (US005724514).
8. With regard to claims 1, 9, 17 and 35, Arias discloses,
- *measuring a transfer rate of the network at the time the client requests transfer of image data sets from the server; and* (Arias, col.3, lines 45-49; col.4, lines 14-18, lines 26-29; col.6, lines 51-55; module 248, fig.7A)

Arias discloses of measuring the *"effective transfer rate for the communications link"* (Arias, col.4, lines 27-28). This effective transfer rate will determine the subsequent transfer of objects to the client responding to the client's request.

- *determining the number of the image data sets to be sent to the client in response to the transfer request, based on the transfer rate and a permitted transfer time determined in advance.* (Arias, col.3, lines 7-16; col.4, lines 14-18, lines 29-31; col.6, lines 55-59; fig.7A-7C)

Arias teaches that the requested data objects can be obtained either sequentially (i.e. one at a time) or concurrently (i.e. more than one at a time) after comparing the measured transfer rate to a predetermined threshold. Arias teaches that *"there are two possible approaches to meet the goal of presenting the user with the most complete information as quickly as possible"* (Arias, col.3, lines 1-3).

This implies that there is a definite desire for the user to receive the requested information in a short period of time.

9. With regard to claims 2, 10 and 18, Arias discloses,

- *further comprising the step of transferring the image data sets whose number has been determined from the server to the client.* (Arias, col.9, lines 48-54; col.10, lines 47-55; fig.7B-7C)

10. With regard to claims 25-27, Arias discloses,

- *wherein an amount of time necessary for transferring the number of image data sets is approximately the permitted transfer time.* (Arias, col.3, lines 1-16; col.4, lines 14-18, lines 29-31; col.6, lines 55-59; fig.7A-7C)

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 3-8, 11-16, 19-24 and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arias (US005724514) and in view of Mogul et al. (US006243761B1).

13. With regard to claims 3, 11 and 19, Arias discloses,

See *claims 2, 10 and 18* rejection as detailed above.

However, Arias does not explicitly disclose,

- *wherein the step of transferring is the step of transferring the image data sets whose number has been determined from the server to the client, based on priority of the image data sets whose transfer is requested.*

Mogul teaches,

- *wherein the step of transferring is the step of transferring the image data sets whose number has been determined from the server to the client, based on priority of the image data sets whose transfer is requested. (Mogul, col.10, lines 59-65)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Mogul reference with Arias reference to optimally send the requested data objects to the client in a reasonable amount of time by

transferring the portions with higher priority first, reducing the size, resolution or number of colors of a graphic image, reducing the frame rate of a video data, or reducing the sampling rate of an audio data.

14. With regard to claims 4-5, 8, 12-13, 16, 20-21, 24 and 33, Arias discloses,

See *claims 2, 10 and 18* rejection as detailed above.

However, Arias does not explicitly disclose,

- *further comprising the step of transferring, from the server to the client, low volume data sets of a remaining portion of the requested image data sets excluding the image data sets whose transfer from the server to the client has been determined.*
- *further comprising the step of transferring from the server to the client, in the case where transfer of the image data sets corresponding to the low volume data sets is requested, the image data sets corresponding to the low volume data sets whose transfer is requested.*
- *wherein the image data sets are thumbnail image data for displaying, on the client, thumbnail images comprising images represented by the image data sets.*

Mogul teaches,

- *further comprising the step of transferring, from the server to the client, low volume data sets of a remaining portion of the requested image data sets excluding the image data sets whose transfer from the server to the client has been determined. (Mogul, col.5, lines 46-66; col.10, lines 59-65)*
- *further comprising the step of transferring from the server to the client, in the case where transfer of the image data sets corresponding to the low volume data*



*sets is requested, the image data sets corresponding to the low volume data sets whose transfer is requested. (Mogul, col.5, lines 46-66; col.10, lines 59-65)*

- *wherein the image data sets are thumbnail image data for displaying, on the client, thumbnail images comprising images represented by the image data sets. (Mogul, col.5, lines 46-66; col.10, lines 59-65)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Mogul reference with Arias reference to optimally send the requested data objects to the client in a reasonable amount of time by transferring the portions with higher priority first, reducing the size, resolution or number of colors of a graphic image, reducing the frame rate of a video data, reducing the sampling rate of an audio data, or perhaps substituting a very small "thumbnail" image instead of the full image.

15. With regard to claims 6-7, 14-15, 22-23 and 34, Arias discloses,

See *claims 1, 9 and 17* rejection as detailed above.

Furthermore, Arias discloses,

- *further comprising the step of transferring to the client a message notifying that the number of the image data sets to be transferred is 0 in the case where the number of the image data sets to be transferred has been determined to be 0. (Arias, col.4, lines 14-18, lines 29-31; col.6, lines 55-59; fig.7A-7C)*

Arias teaches that the requested data objects can be obtained either sequentially (i.e. one at a time) or concurrently (i.e. more than one at a time) after comparing the measured transfer rate to a predetermined threshold.

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- *further comprising the step of transferring information representing the transfer rate to the client. (Arias, col.3, lines 45-49; col.4, lines 14-18, lines 26-29; col.6, lines 51-55; module 248, fig.7A)*

### **Response to Arguments**

16. Applicant's arguments with respect to *claims 1, 9 and 17* have been considered but they are not persuasive.

17. With regard to *claims 1, 9 and 17*, the Applicants point out that:

- *In this instance, Arias fails to teach or suggest each and every claimed element. For example, independent claim 1 recites, in part, "determining the number the image data sets be sent to the client ... based on the transfer rate and a permitted transfer time determined in advance." Emphasis added. Independent claims 9 and 17 recite similar features. Contrary the Examiner's assertion, Arias cannot be relied upon to teach or suggest at least this recited feature.*
- *It is important to recognize that there is simply no concept of a "permitted transfer time" disclosed in Arias. At best, Arias may be interpreted to determine a type of transfer (sequential or concurrent) based on two factors, the effective transfer rate and the threshold transfer rate.*

However, the Examiner finds that the Applicants' arguments are not persuasive and maintains that Arias does disclose,

- *measuring a transfer rate of the network at the time the client requests transfer of image data sets from the server; and (Arias, col.3, lines 45-49; col.4, lines 14-18, lines 26-29; col.6, lines 51-55; module 248, fig.7A)*

Arias discloses of measuring the *"effective transfer rate for the communications link"* (Arias, col.4, lines 27-28). This effective transfer rate will determine the subsequent transfer of objects to the client responding to the client's request.

- *determining the number of the image data sets to be sent to the client in response to the transfer request, based on the transfer rate and a permitted transfer time determined in advance.* (Arias, col.3, lines 7-16; col.4, lines 14-18, lines 29-31; col.6, lines 55-59; fig.7A-7C)

Arias teaches that the requested data objects can be obtained either sequentially (i.e. one at a time) or concurrently (i.e. more than one at a time) after comparing the measured transfer rate to a predetermined threshold. Arias teaches that *"there are two possible approaches to meet the goal of presenting the user with the most complete information as quickly as possible"* (Arias, col.3, lines 1-3).

This implies that there is a definite desire for the user to receive the requested information in a short period of time. If the time period is too long, the user would be unhappy with the service provided. Also, Arias teaches that for *"a high bandwidth connection ... [the] data objects to be transferred concurrently with minimal impact upon the amount of time needed"* (Arias, col.3, lines 10-12) and that *"the time needed to concurrently transfer all secondary data objects will generally be closed to the time needed to transfer the largest of the secondary objects"* (Arias, col.3, lines 14-16). Again, Arias implies of a time period in which the requested data should be transferred. In addition to the implication of a period of time as discussed above, Arias takes into account of a predetermined threshold that would ultimately translate into a period of time for the requested data to be transferred.

Even more, the Applicants' claim of "*a permitted transfer time determined in advance*" means that the time is a fixed constant. In the event that the transfer rate of the communication link is low, the requested data is large and the time is fixed, it is conceivably that the to be transferred packet size will be larger than the maximum allowable packet size. Since this is not possible under the current networking infrastructure, the only other option means that the time it takes to deliver the requested data would exceed the time constant established. Vice versa, a situation would arise from the unnecessary long period of time for the user to wait for the requested data or from severely underutilizing the communication link's capacity. It is believed that it is not the Applicants' intention for these situations to arise, but the invention as claimed may lead to these unfavorable results. Therefore, the Applicants still failed to clearly disclose the novelty of the invention and identify specific limitation, which would define patentable distinction over prior art.

### ***Conclusion***

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated


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from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Duong whose telephone number is 571/272-3911. The examiner can normally be reached on M-F 7:30AM - 4:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on 571/272-6159. The fax phone numbers for the organization where this application or proceeding is assigned are 703/872-9306 for regular communications and 703/872-9306 for After Final communications.

*Thomas Duong (AU2145)*

*February 18, 2005*

  
VALENCIA MARTIN-WALLACE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100